DIVYYAA MACHAP v. LEMBAGA KUMPULAN WANG SIMPANAN PEKERJA

HIGH COURT MALAYA, SHAH ALAM
CHOONG YEOW CHOY JC
[SUIT NO: BA-22NCvC-503-12-2022]
18 JUNE 2024

Abstract – *(i) In a case where a contributory/member has two accounts with the Employees Provident Fund, the Employees Provident Fund Board is entitled to exercise its administrative powers to merge the accounts; (ii) The nomination made in one of the accounts is indeed valid if it is proven to have been made in accordance with the Employees Provident Fund Act 1991, Employees Provident Fund Regulations 2001 and Employees Provident Fund Rules 1991. In accordance with reg. 9(2)(a)(i) of the Employees Provident Fund Regulations 2001, the nominee is entitled to the balance sum in one account that has merged with another account.*

PROVIDENT FUND: *Employees Provident Fund – Accounts – Merging of two accounts – Whether Employees Provident Fund Board vested with power to merge accounts – Competing claims between nominee and administratrix of deceased's estate – Whether nomination valid – Whether nominee entitled to balance sum in one account that has merged with another account – Employees Provident Fund Act 1991 – Employees Provident Fund Regulations 2001 – Employees Provident Fund Rules 1991*

Every contributor/member should have one main account (number) with the Employees Provident Fund. However, in this case, the deceased contributor/member had two main accounts (numbers) assigned to him which were (i) Account No. 10458236; and (ii) Account No. 13716036. The deceased did not make any nomination for Account No. 10458236 but he nominated one Dharsyaini Vijaya Kumar ('Dharsyaini') as the beneficiary for Account No. 13716036. There were funds remaining in Account No. 10458236, but none left in Account No. 13716036. The situation was made complicated when the Employees Provident Fund merged these two accounts into a single account. In the process, Account No. 13716036 was subsumed into Account No. 10458236, which effectively deleted or erased Account No. 13716036, leaving the deceased with only Account No. 10458236. These events led to competing claims between Dharsyaini, the nominee named in Account No. 13716036 and the plaintiff, who served as the administratrix of the deceased's estate. The legal questions that arose under O. 14A of the Rules of Court 2012 were: (i) whether as Account

A No. 10458236 had no nomination, the letters of administration granted by the High Court with the provisions of the Probate and Administrative Act 1959 should take precedence; (ii) whether Account No. 13716036 which had a nomination to a Dharsyaini to receive the amount standing in credit in this account which was duly registered and retained for safekeeping by the B Employees Provident Fund Board valid; and (iii) whether the Employees Provident Fund Board was vested with the power to merge Accounts No. 10458236 and 13716036 during the lifetime of the deceased on discovering that there were two accounts under the deceased.

Held (dismissing originating summons):

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(1) The nomination made in Account No. 13716036 was valid as it was made in accordance with the provisions of the Employees Provident Fund Act 1991, the Employees Provident Fund Regulations 2001 and the Employees Provident Fund Rules 1991. Since the nomination remained valid, in accordance with reg. 9(2)(a)(i) of the Employees D Provident Fund Regulations 2001, Dharsyaini was entitled to the balance sum in Account No. 10458236 when this account was merged with Account No. 13716036. (paras 21 & 25)

(2) While it was true that the Employees Provident Fund Act 1991, the E Employees Provident Fund Regulations 2001 and the Employees Provident Fund Rules 1991 contained no express provisions granting the defendant the power to merge accounts, there were equally no provisions within these Act, Regulations and Rules that prohibit such action. Therefore, the defendant was entitled to exercise its administrative powers to merge the said account. (para 31)

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(3) The defendant had no vested interest in the present suit. Its only concern was to perform its statutory duties as demanded of it. It was acknowledged that the deceased did not make a new nomination or renominate Dharsyaini after the accounts were merged. However, it was equally important to note that he did not cancel the existing nomination G of Dharsyaini either. This case was unprecedented, and the court must proceed by thoroughly examining and applying the existing provisions of the 'law.' An interpretation of these provisions supported the position advocated by the defendant. (paras 34-36)

H **Case(s) referred to:**

How Yew Hock (Sebagai Wasi Untuk Yee Sow Thoo @ Chor Siew Tho (P)) v. Lembaga Kumpulan Wang Simpanan Pekerja [1996] 3 CLJ 1 FC ***(refd)***

Krishnaveni Munusamy & Anor v. Bawaneswary R Chinniah & Ors [2013] CLJU 90; [2013] 1 LNS 90 HC ***(refd)***

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Legislation referred to:
Employees Provident Fund Regulations 2001, regs. 7(1), (2), (3), 9(2)(a)(i)
Employees Provident Fund Rules 1991, r. 34
Rules of Court 2012, O. 14A

For the plaintiff - Jayanthi Devi Balaguru & K Sathia Devi; M/s JD Balaguru
For the defendant - Noor Adzraii Noor Azhar & Saifuddin Mohd Zin; KWSP

Reported by Suhainah Wahiduddin

JUDGMENT

Choong Yeow Choy JC:

Introduction

[1] Every contributor/member should have one main account (number) with the Employees Provident Fund. However, in the present matter before this court, the deceased contributor/member, Machap a/l Suppiah, had two main accounts (numbers) assigned to him. The accounts are:

(i) Account No. 10458236; and

(ii) Account No. 13716036.

[2] Machap a/l Suppiah in the present case did not make any nomination for Account No. 10458236. However, he nominated one Dharsyaini a/p Vijaya Kumar as the beneficiary for Account No. 13716036.

[3] There were funds remaining in Account No. 10458236, but none left in Account No. 13716036. Normally, this would have been the end of the matter. However, the situation was complicated when the employees provident fund merged these two accounts into a single account. In the process, Account No. 13716036 was subsumed into Account No. 10458236. This action effectively deleted or erased Account No. 13716036, leaving Machap a/l Suppiah with only Account No. 10458236.

[4] The events described above led to competing claims between Dharsyaini a/p Vijaya Kumar, the nominee named in Account No. 13716036, and the plaintiff, who serves as the administratrix of Machap a/l Suppiah's estate.

The Questions For Determination

[5] The parties have reached an agreement for this court to address a number of legal questions under O. 14A of the Rules of Court 2012.

[6] The questions couched by the parties are as follows:

Question 1

Whether Machap a/l Suppiah (the deceased) has two accounts under the employees provident fund namely:

(iii) Account No. 10458236; and

(iv) Account No. 13716036.

Question 2

Whether as the Account No. 10458236 has no nomination, the letters of Administration granted by the Kuala Lumpur High Court *vide* OS No. WA-31NCvC-996-03/2022 with the provisions of the Probate and Administrative Act 1959 should take precedence?

Question 3

Whether the Account No. 13716036 which has a nomination to a Dharsyaini a/p Vijaya Kumar to receive the amount standing in credit in this account which was duly registered and retained for safekeeping by the employees provident fund Board is valid?

Question 4

Whether the employees provident fund Board is vested with the power to merge Accounts No. 10458236 and 13716036 during the lifetime of Machap a/l Suppiah on discovering there were two (2) accounts under Machap a/l Suppiah?

Question 5

In the even this Honourable Court answers No. 4 in the affirmative, the following will be determined as to the nomination of the merged account No. 10458236.

Question 6

If so, there was no nomination for Account No. 10458236 registered and retained for safe-keeping by the employees provident fund Board at the time of the death of Machap a/l Suppiah, having regards that at all times the nomination is revocable until the death of the nominator?

Question 7

Whether the employees provident fund Board's records at the time of the death of Machap a/l Suppiah showed that the Account No. 10458236 had no nomination registered with the credit of RM55,363.26 and hence the advice of the employees provident fund Board to Divyyaa a/p Machap to apply and obtain the Letters of Administration under the provisions of the Probate and Administration Act 1959 is valid and Divyyaa a/p Machap is deemed the recipient?

Question 8

Whether the employees provident fund board's records at the time of the death of Machap a/l Suppiah showed that the Account No. 13716036 had the nomination of Dharsyaini a/p Vijaya Kumar registered and in safe-keeping of the employees provident fund board with no credit?

[7] This court holds the view that the pivotal issues in this case are encapsulated in questions 2, 3, and 4.

The Parties And The Background Facts

[8] The plaintiff, Divyyaa a/p Machap, is the biological daughter of Machap a/l Suppiah.

[9] The defendant, Kumpulan Wang Simpanan Pekerja ("KWSP") or Employees Provident Fund ("EPF") is Malaysia's foremost pension fund. It was established in 1951 to help the Malaysian workforce save for their retirement in accordance to the Employees Provident Fund Act 1991.

[10] Machap a/l Suppiah passed away on 17 July, 2021. Thereafter, the plaintiff made the following averment in her statement of claim in a writ action that she had commenced against the defendant on 15 December 2022.

> 1. Plaintif telah dinasihati oleh pegawai Kumpulan Wang Simpanan Pekerja agar memohon satu Surat Kuasa Mentadbir untuk pengeluaran KWSP simati Machap a/l Suppiah (K/P No. 680106-04-5373/A0999502) No: Akaun: 10458236.
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> 2. Plaintif telah memohon dan memperolehi Surat Kuasa Mentadbir No: WA-31NCvC-996-03/2022 untuk harta pusaka simati Machap a/l Suppiah (K/P No: 680106-04-5373/A0999502) bertarikh 31-05-2022 berdasarkan semakan awal dilakukan pada ketika itu.
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> 3. Plaintif telah melalui firma peguamcaranya, Tetuan JD Balaguru menghantar satu surat bertarikh 19-09-2022 kepada Defendan mengenai tuntutan pengeluaran KWSP simati Machap a/l Suppiah (No. Akaun: 10458236) oleh Plaintif.
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> 4. Plaintif telah sekali lagi melalui firma peguamcaranya, Tetuan JD Balaguru menghantar satu lagi surat peringatan bertarikh 10-11-2022 kepada Defendan mengenai tuntutan pengeluaran KWSP simati Machap a/l Suppiah (No. Akaun: 10458236) oleh Plaintif.
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> 5. Pada 01-12-2022, Plaintif telah menerima satu surat daripada Defendan yang bertarikh 24-11-2022 dan ditandakan "TANPA PREJUDIS" di mana Plaintif dinasihatkan bahawa sekiranya Plaintif mempunyai bantahan terhadap penamaan yang dibuat oleh mendiang bapanya semasa hayatnya, Plaintif dinasihatkan untuk menggunakan saluran perundangan dengan memfailkan Injuksi Mahkamah atau Saman Pemula daripada Mahkamah Tinggi (Sivil) dan menamakan Lembaga KWSP sebagai responden.

[11] The root cause for the filing of this action by the plaintiff against the defendant can be attributed to two decisions and/or actions taken by the defendant. The first is their decision in merging the two accounts into a single account and the second was their decision that the nomination of Account No. 13716036 is deemed automatically the nomination for Account No. 10458236. These decisions meant that the monies that were originally

A in Account No. 10458236 are now subject to a claim by both Dharsyaini a/p Vijaya Kumar, the beneficiary nominated for Account No. 13716036 and the plaintiff, the Administratrix of Machap a/l Suppiah's estate.

The Parties' Contention

B **[12]** The plaintiff's contentions were simply that first, the deceased member Macha a/l Suppiah did not make any nomination for Account No. 10458236 under reg. 9 of the Employees Provident Fund Regulations 2001. However, the plaintiff did concede and did not challenge the fact that the deceased member Macha a/l Suppiah did make a nomination on 7 April, C 2014 for Account No. 13716036 under reg. 9 of the said Regulations. The beneficiary named being Dharsyaini a/p Vijaya Kumar.

[13] Following the above, the plaintiff's argument was that the letters of administration granted by the Kuala Lumpur High Court *vide* OS No. WA-31NCvC-996-03/2022 under the provisions of the Probate and D Administrative Act 1959 apply to Account No. 10458236.

[14] A parallel submission made by the plaintiff was that the defendant is not vested with any power to merge the accounts of the plaintiff.

[15] As far as the defendant was concerned, it was merely exercising its E administrative power when it merged the two accounts.

[16] More importantly, the defendant argued that the nomination made in Account No. 13716036 had complied with the provisions of the Employees Provident Fund Act 1991, the Employees Provident Fund Regulations 2001 and the Employees Provident Fund Rules 1991. That statutory nomination F can only be "diberhentikan" or become "terbatal" under one or the circumstances expressly provided for in reg. 7(1) of the Employees Provident Fund Rules 1991 and that did not happen in the present case. Hence, the nomination remains valid despite the merger of the accounts.

This Court's Decision

G **[17]** The answer to question 1 is undisputable, and it is in the affirmative. The reason being the deceased Machap a/l Suppiah had registered himself as a member on 10 March 1984 using his old identity card bearing the No. A009502. For this. he was assigned the Account No. 10458236. However, on 1 August 1995, the deceased Machap a/l Suppiah had H registered himself as a member for the second time, using his new identity card bearing the No. 680106-04-5373. On this occasion, he was assigned Account No. 13716036.

[18] The answers to questions 2 and 3 are crucial for the determination of this matter. Before this court answers both of these questions, it is apt that I we recap the arguments advanced by the parties.

[19] As Account No. 10458236 was without any nomination, the plaintiff reasoned that the letters of administration granted by the Kuala Lumpur High Court *vide* OS No. WA-31NCvC-996-03/2022 under the provisions of the Probate and Administrative Act 1959 applies to this account. Accordingly, the plaintiff contended that the answer to question 2 should be in the affirmative.

[20] The defendant argued instead that since the two accounts have been merged and the nomination from Account No. 13716036 remains as a valid nomination, the question of the application of the Probate and Administrative Act 1959 does not arise. The logic of this argument being that the accounts have been merged and the nomination was in no way affected by the merger of these accounts.

[21] The nomination made in Account No. 13716036 was indeed valid as it was made in accordance with the provisions of the Employees Provident Fund Act 1991, the Employees Provident Fund Regulations 2001 and the Employees Provident Fund Rules 1991. That was a statutory nomination as explicated by the Federal Court in *How Yew Hock (Sebagai Wasi Untuk Yee Sow Thoo @ Chor Siew Tho (P)) v. Lembaga Kumpulan Wang Simpanan Pekerja* [1996] 3 CLJ 1; [1996] 2 AMR 2161; [1996] 2 MLJ 474; [1996] 1 MLRA 25. This point was conceded by the plaintiff.

[22] Regulation 7(1) of the Employees Provident Fund Regulations 2001 provides as follows:

> Penghentian Penamaan
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> 7. (1) Sesuatu penamaan hendaklah terhenti berkuat kuasa:
>
> (a) apabila orang yang dinamakan mati, atau, jika terdapat lebih daripada seorang orang yang dinamakan, apabila semua orang yang dinamakanmati, semasa hayat ahli itu;
>
> (aa) apabila institut yang dinamakan digulungkan atau dibubarkan;
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> (b) dengan notis pembatalan yang dibuat dalam borang KWSP 4A;
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> [Mas. P.U. (A) 382/2016]
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> (c) dengan apa-apa penamaan yang dibuat kemudiannya dalam borang KWSP 4; atau
>
> [Pin. P.U. (A) 382/2016]
>
> (d) bagi ahli yang beragama Islam, jika:
>
> (i) Orang yang dinamakan belum mencapai umur lapan belas tahun apabila permohonan pengeluaran di bawah perenggan 54(1)(a) Akta dibuat oleh orang yang dinamakan itu atau warisnya; atau
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> (ii) Tiada permohonan pengeluaran di bawah perenggan 54(1)(a) Akta dibuat oleh orang yang dinamakan dalam tempoh satu tahun dari tarikh kematian ahli.
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> [Pin. P.U. (A) 382/2016]

[23] Upon an examination of reg. 7(1), this court is in agreement with the defendant that the none of the circumstances as outlined in reg. 7(1) has been triggered or invoked in this case.

[24] In addition, this court takes cognisance of regs. 7(2) and 7(3) which state as follows:

> (1) penamaan yang disebut dalam subperaturan (1) tidaklah terbatal dengan apa-apa wasiat atau apa-apa perbuatan, peristiwa atau cara lain.
>
> (3) Jika terdapat lebih daripada seorang orang yang dinamakan dan salah seorang daripada orang yang dinamakan itu mati terlebih dahulu daripada ahli, maka, jika tiada apa-apa penamaan yang dibuat kemudiannya oleh ahli itu bagi melupuskan bahagian orang yang dinamakan yang telah mati itu, bahagian itu hendaklah kembali kepada harta pusaka ahli itu.

[25] Since the nomination remains valid, this court agrees with the defendant that in accordance with reg. 9(2)(a)(i) of the Employees Provident Fund Regulations 2001 (which deals with "pembayaran atas kematian ahli jika ada penamaan"), Dharsyaini a/l Vijaya Kumar is entitled to the balance sum in Account No. 10458236 when this account was merged with Account No. 13716036.

Regulation 9(2)(a)(i) of the Employees Provident Fund Regulations 2001 reads as follows:

> (2) Jika seorang ahli mati dan terdapat penamaan dibuat mengikut Peraturan-Peraturan ini:
>
> (a) orang sebenar yang dinamakan itu hendaklah menerima amaun yang berada pada kredit ahli yang mati itu:
>
> (i) dalam hal ahli yang bukan beragama Islam, sebagai seorang benefisiari;

[26] In view of the above, the answer to question 2 is in the negative while the answer to question 3 is in the affirmative.

[27] On whether the Employees Provident Fund Board is vested with the power to merge the two accounts, the plaintiff's position is that the defendant is not vested with any power to merge the accounts of the plaintiff while the defendant maintained that it was merely exercising its administrative power to merge the accounts.

[28] In addressing this point, the plaintiff reverted to the following argument, that is, the deceased Machap a/l Suppiah did not make a second or subsequent nomination, citing r. 34 of the of the Employees Provident Fund Rules 1991 which reads as follows:

34. Nominations to be made in Form EPF 4.

(1) Every nomination shall be made in writing in Form EPF 4 and shall be signed by the member of the Fund in the presence of a witness, and the signature of such member shall be attested by the witness.

(2) Where a member of the Fund having made a nomination in accordance with these Rules wishes to make a second or subsequent nomination he shall complete and forward a fresh Form EPF 4 containing such nomination.

(3) A nomination shall be of no effect unless the Form EPF 4 duly completed is sent and reaches the Board during the lifetime of the member.

(4) Every nomination form registered shall be retained in safe-keeping by the Board.

(5) Any person who attests the signature of the member of the Fund in respect of a nomination shall be disqualified from any benefit thereunder.

[29] The plaintiff further referred this court to the decision of the High Court in *Krishnaveni Munusamy & Anor v. Bawaneswary R Chinniah & Ors* [2013] CLJU 90; [2013] 1 LNS 90; [2013] 10 MLJ 106; [2013] MLRHU 123 which had alluded to the said r. 34.

[30] The core argument made by the plaintiff is that "it is not within the powers of the defendant to deem that the nomination made by the deceased for the Account No. 13716036 is automatically to be treated as the nominee for the Account No. 10458236, bearing in mind that there is no fresh nomination in the prescribed Form EPF 4 containing such nomination and retained in safe-keeping by the Board for Account No. 10458236".

[31] While it is true that the Employees Provident Fund Act 1991, the Employees Provident Fund Regulations 2001, and the Employees Provident Fund Rules 1991 contain no express provisions granting the defendant the power to merge accounts, there are equally no provisions within these Act, Regulations, and Rules that prohibit such action. Therefore, this court concludes that the defendant is entitled to exercise its administrative powers to merge the said account.

[32] In view of the findings by this court as to the issues raised in questions 2 and 3 (in paras. [19] to [26]) and in question 4 (in paras. [27] to [31]), this court is of the considered view that the answers to questions 6, 7 and 8 are self-evident.

[33] This is one case where the outcome will be devastating to either the claimants, namely, the plaintiff and Dharsyaini a/l Vijaya Kumar. It is unfortunate that only one of these claimants will be entitled to the proceeds in the account of Machap a/l Suppiah that is with the defendant.

A **[34]** The defendant has no vested interest in the present suit. Its only concern is to perform its statutory duties as demanded of it.

[35] It is acknowledged that Machap a/l Suppiah did not make a new nomination or renominate Dharsyaini a/p Vijaya Kumar after the accounts were merged. However, it is equally important to note that he did not cancel
B the existing nomination of Dharsyaini a/p Vijaya Kumar either.

[36] This case is unprecedented, and the court must proceed by thoroughly examining and applying the existing provisions of the 'law.' An interpretation of these provisions supports the position advocated by the
C defendant.

[37] The originating summons in encl. 1 is dismissed.

[38] This court is of the view that, considering the circumstances of the case, an order of no costs is fair.

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